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MAY 6 - 2008

FCC Mail Room

May 2, 2008

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

RE: Corrected Comments, MB Docket No 04-233

Dear Ms. Dortch:

On April 28, 2008 the educational non-profit Common Frequency timely submitted a Comment with respect to MB Docket 04-233. Upon review after the submitting we noticed several typographical errors in the document. Attached are the corrected Comments of Common Frequency. We sincerely request that the corrected version of this document supersede the original timely filed Comment.

This signed letter also serves to state that the content—footnotes, dates, data, figures, charts, etc—are all unchanged from the original Comment except for grammar and spelling corrections. In addition, “filed behalf” was changed to “filed by” on the first page to reflect the actual representation of the Comment, and on page 39, reference to “Appendix 2” was changed to “Appendix B” since the Appendices are lettered, not numbered. To the extent that the Commission may determine that its leave to file is required for these Comments, it is respectfully requested, and in such case, we submit that grant of such leave is warranted. If there are any questions concerning this document, feel free to contact me directly.

Respectfully Submitted,

Jeff Shaw
President, Common Frequency
jeff@commonfrequency.org

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Received & Inspected
MAY 6 - 2008
FCC Mail Room

In the Matter of Application of

Broadcast Localism

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MB Docket No. 04-233

COMMENTS OF COMMON FREQUENCY

April 28, 2008

COMMON FREQUENCY, INC

PO Box 4301
Davis, California, 95617

Filed by
Todd Urick

Overview

Common Frequency is a 501(c)(3) non-profit corporation founded to promote public participation in broadcasting. We believe that since much of the public does not know the procedures regarding radio station licensing, petitioning, and commenting to the Commission, they cannot fully take advantage of broadcast opportunities. Our interest lies in promoting community, student, public, LPFM and other locally oriented educational broadcasting services.

Within the past few years the FCC has received written comments and input at local hearings in which the public has expressed disappointment in how broadcasters serve the local public interest. The FCC has asked for input on specific policies that could be implemented to accomplish this goal. Many broadcasters maintain that the current rules adequately fulfill localism objectives and no further regulation is required. While some broadcasters do fulfill serving their communities of license, others do not. With this latest Report and Notice of Proposed Rulemaking MB Docket No 04-233 (the "Report"), the Commission has mentioned several methods ensuring localism.

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Introduction

Title III Section 307(b) of the Communications Act requires the FCC to make laws for broadcasters regarding equal service in all areas; current rules do not sufficiently enforce this statute. New regulation would impose minimum standards to evaluate how well a broadcast outlet serves the public. Currently there is no benchmark, so if a station blatantly disregards serving the public interest, citizens have no recourse to demand or guarantee better utilization of their airwaves. Ideally, new regulations should be implemented that raise the quality of the broadcasters who are not serving the local public interest, and not penalize the ones who are.

It is the concern of broadcasters that new regulation would command additional money for implementation of those regulations. If a broadcaster is not currently participating with localism measures, this may be true. If a broadcaster is producing local programming, meeting with members of the public, maintaining communication with the community, etc., the additional costs of documenting these measures would be minimal.

Let us remember, the airwaves belong to the public and were licensed to individual groups to, in the case of commercial radio, derive profit. Using a public resource typically means having the government provide minimal standards for use; this is seen in several areas of government regulation. In a factory, market forces do not translate easily to environmental, so environmental regulations exist. In the food and drug industry, market forces do not always consider public health, thus we have food labeling, FDA,

USDA, and ever-evolving controls on ingested items. Market forces also cannot always serve the public interest in broadcast localism standards.

Some commercial broadcasters depend on the “staying competitive” argument—meaning that concentrating resources on local programming and FCC paperwork makes an organization less competitive. The “uncompetitive” argument has not been proven. If a commercial broadcaster cannot maintain minimum standards in serving the public, that broadcaster could sell the station. Surely another group will implement these standards and successfully operate the station. Yet station owners that currently monopolize a public resource expect the FCC to not just secure profitability, but *maximum profitability*. If some broadcasters claim it is unprofitable to adequately serve with adequate localism standards how can they explain the percentage of broadcasters successfully implementing it now and succeeding? Secondly, radio broadcasting has become significantly cheaper to implement. In the old days terrestrial audio repeater links, production rooms with reel-to-reels, media players (cart machines, turntables, cassette players), and specialized mechanical equipment were needed for broadcast quality operations. Today these analog technologies have been replaced by a standard Windows-based personal computer with broadband access. The price of production has plummeted, resulting in additional profits.

I. Noncommercial Localism

Some non-commercial, educational (NCE) broadcasters may claim there is encroachment of free speech if localism standards are required. We should note that NCE licenses, unlike commercial licenses, are handed to non-profits for free, with no yearly use fee.

Educational licenses are handed out “first come first served”, and not by best usage as deemed by the local educational community. Thus, licenses are granted to entities that have money, means, or knowledge of obtaining a license. Broadcasting is unlike other free speech mediums—such as press and Internet—because anyone is free to start a newspaper or website at anytime to express their views. This system of determination of who obtains rights to free speech over the public airwaves is inequitable unless the FCC stipulates that broadcasters must serve diverse aspects of the public interest by allowing local views expressed on the airwaves, and the public to feasibly challenge a broadcaster’s license at a renewal date if they are not serving the public interest.

It is the FCC’s mission to maintain equal service to all localities, yet by observation we know all communities have varying ratios of local and non-local NCE programming. According to the FCC and Supreme Court’s interpretation of Section 307(b), fair distribution of service should be additionally applied to localism¹. For example, hypothetically speaking, non-local entity *Star Trek Educational Media* (“STEM”) owns two studio-waived NCE licenses in Town A and promotes Star Trek education. In Town B there are two volunteer community radio stations that broadcast local weather advisories, cover local elections, generate local news, and play local artists. If these were the only two local NCE services available in each of these two towns, we would not call these services equal under 307(b). It is arguable that STEM is serving the local public interest, and the FCC is required to oversee that localism in these cases is fairly addressed. Currently there are few FCC regulations to govern this fairness of service. Therefore, the Commission should enact new rules to enforce localism in non-

¹ As reaffirmed in “Report” FCC 07-218 Para 5

commercial educational broadcasting. Tighter controls on main studio waivers, and regulations regarding local and non-local originated programming is a logical place to examine.

NCE & LPFM Programming Examination: Local vs. Non-local

We looked at non-commercial, educational programming available in eight different western radio markets of varying sizes. We chiefly wanted to view *community NCE* against *non-local full-power NCE*, and *translator* against *LPFM* to see if localism is currently being addressed within non-commercial radio sources. The overall goal of the study is to view how the Commission's current licensing policies affect non-commercial localism. Specifically, we examined:

1. The availability of "local non-commercial community and student radio" sources vs. "non-local non-commercial educational (NCE)" (translator and studio-waived) sources.
2. The comparison of translators vs. LPFM in each market.

We sampled eight different western US markets of differing sizes to obtain a sampling of what services are available in each market.

Western Metros – Sampled Markets

| Metro | Mkt Rank | Mkt. Sampling Tier | Population Tier |
|----------------------|-----------------|---------------------------|------------------------|
| LA/Inland Empire, CA | 2 | 1 – 10 | ~ 4 – 15 Million |
| Phoenix, AZ | 15 | 10 – 20 | ~ 2 – 4 M |
| Portland, OR | 23 | 20 – 50 | ~ 1 – 2 M |
| Bakersfield, CA | 77 | 50 – 100 | ~ 450K – 1 M |
| Reno, NV | 124 | 100 – 150 | ~ 300 – 450K |
| Wenatchee, WA | 175 | 150 – 200 | ~ 200 – 300K |
| Redding, CA | 228 | 200 – 250 | ~ 100 – 200K |
| San Angelo, TX | 290 | 250 – 302 | < 100K |

Reporting from smallest to largest:

San Angelo, TX – Market 290

San Angelo is a small market with no local main studio reserved band service (88.1-91.9FM). While EMF, from California, enjoys three full power stations, the local only originated non-commercial service is relegated to a 42 watt LPFM.

San Angelo, TX – Total Non-Local NCE- relayed Programming

| | |
|------------------------------------------|------------------|
| EMF (Rocklin, CA) | KLRW, KNAR, KTLP |
| Univ of Texas (Austin, TX) | KUTX |
| Christian Broadcasting Company (Abilene) | K215BH |
| American Family Association (Tupelo, MI) | KMEO |

San Angelo, TX – Locally Programmed Student/Community/Public NCE Stations

None

San Angelo, TX – Student/Community Programmed LPFM Stations

| | |
|------------------------------|---------|
| Concho Christmas Celebration | KCSA-LP |
|------------------------------|---------|

Market Tally

| | |
|------------------------------------|---|
| NCE Programming via Translator | 2 |
| Total Translator | 3 |
| Translator MX/Pending FX | 0 |
| Current Licensed LPFM within 30 km | 2 |
| Current LPFM Availability | 0 |

| | |
|-------------------------|---|
| Full Power NCE | 5 |
| Total Nonlocal | 5 |
| Total Local Main Studio | 0 |

Redding, CA – Market 228

Redding is a small market with population 158,500. Although the NCE band is at or near peak capacity, no NCE with a local studio currently has a licensed 1 mv/m contour that covers at least 50% the city. In fact, although Redding is 100 miles from the nearest state border, the current per-transmitter NCE tally shows that the majority of the programming in the vicinity from 88.1 - 91.9FM originates from *outside* the state of California (Figure 1).

| Local/ NonLoc | Program Origination | Freq | Chan | Call | COL | Format | Owner |
|------------------|------------------------|------|-------|--------|-------------------------|-----------|------------------------------------|
| NL | ASHLAND OR | 88.1 | 201C2 | KNSQ | MOUNT SHASTA CA | NPR | OREGON ST BOARD OF HIGHER ED... |
| NL | TWIN FALLS ID | 88.5 | 203D | K203CU | BURNEY CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| NL | CHICO CA | 88.9 | 205C1 | KFPR | REDDING CA | NPR | CALIF STATE UNIV AT CHICO |
| NL | MCALLEN TX | 89.3 | 207D | K207CM | RED BLUFF CA | RELIGIOUS | PAULINO BERNAL EVANGELISM |
| NL | TWIN FALLS ID | 89.3 | 207D | K207CE | COTTONWOOD CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| NL | TWIN FALLS ID | 89.3 | 207D | K207CT | LAKEHEAD CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| NL | CHICO CA | 89.5 | 208D | K208BJ | WEAVERVILLE, ETC. CA | NPR | WEAVERVILLE TRANSLATOR CO., INC. |
| NL | ASHLAND OR | 89.7 | 209C2 | KNCA | BURNEY CA | NPR | OREGON ST BOARD OF HIGHER ED... |
| NL | (ROCKLIN CA) | 90.1 | 211D | K211CO | REDDING CA | RELIGIOUS | EDUCATIONAL MEDIA FOUNDATION |
| NL | TWIN FALLS ID | 90.3 | 212D | K212DF | BEND CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| L | BURNEY CA | 90.5 | 213C2 | KIBC | BURNEY CA | RELIGIOUS | BURNEY EDUCATIONAL BROADCASTING... |
| L* | RED BLUFF CA | 90.7 | 214A | KTHM | RED BLUFF CA | * | TEHAMA COUNTY COMMUNITY BROAD... |
| NL | ASHLAND OR | 90.9 | 215D | K215BP | CENTRAL VALLEY, ETC. CA | NPR | OREGON ST BOARD OF HIGHER ED... |
| NL | ASHLAND OR | 90.9 | 215D | K215BI | BURNEY CA | NPR | OREGON ST BOARD OF HIGHER ED... |
| NL | ASHLAND OR | 91.3 | 217D | K217AS | BIG BEND & BUSH BAR CA | NPR | OREGON ST BOARD OF HIGHER ED... |
| NL | (ROCKLIN CA) | 91.5 | 218A | KKRO | REDDING CA | RELIGIOUS | EDUCATIONAL MEDIA FOUNDATION |
| NL | CHICO CA | 91.9 | 220D | K220EB | BURNEY CA | NPR | THE UNIVERSITY FOUNDATION |
| NL | CHICO CA | 91.9 | 220D | K220EC | DUNSMUIR, MCCLOUD, CA | NPR | THE UNIVERSITY FOUNDATION |
| NL | TWIN FALLS ID | 91.9 | 220D | K220IR | WEAVERVILLE CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |

* Not on-air yet

Figure 1: NCE FM Snapshot: Redding, CA area radio market. NL = Nonlocal program origination, L = Local program origination.

Redding, CA – Total Non-Local NCE- relayed Programming²

| | |
|------------------------------------|----------------------------------------------------------------------|
| Calvary Chapel (Twin Falls, ID) | K225AJ, K262AM, K298AF, K203CU, K207CE, K207CT, K212DF, K220IR |
| EMF (Rocklin, CA) | KKRO, KKLC, KLVB, K211CO, K232DQ, K254AJ, K270AA |
| Oregon St Board. (Ashland, OR) | KNSQ, KNCA, K215BP, K215BI, K217AS |
| Family Stations (Sacramento, CA) | K268AJ |
| CSU Chico (Chico, CA) | KFPR, K220EB, K220EC, K259AW, K208BJ |
| Paulino Bernal Evangel (McAllenTX) | K207CM |

Redding, CA – Locally Programmed Student/Community/Public NCE Stations

None

Redding, CA – Student/Community Programmed LPFM Stations

| | |
|-----------------------------------|---------|
| Red Bluff Joint Union High School | KRBH-LP |
|-----------------------------------|---------|

Market Tally

| | |
|-------------------------------------------|------------------|
| NCE Programming via Translator | 21 |
| Total Translator | |
| Translator MX/Pending FX | 1 |
| Current Licensed LPFM within 30 km | 2 |
| Current LPFM Availability in Redding City | 0 |
| Full Power NCE | 5 |
| Total Studio Waived | (4) |
| Total Local Studio | (1) ³ |

According to the FCC and Supreme Court's interpretation of Section 307(b), although Redding has no NCE white or gray areas from the technical definition, the city could be an example where the Commission's current regulations do not uphold NCE fair distribution of service in terms of localism⁴.

² Excluding Hayfork, CA

³ Burney, CA, although does not officially cover city of Redding with 60 dBu

⁴ FCC 07-218 Para 5

Wenatchee, WA – Market 175

Wenatchee, WA – Total Non-Local NCE- related Programming

| | |
|---------------------------------------------------------------------------------------------|-----------------------------------------------|
| EMF (Rocklin, CA) | KLUW, K204DD, |
| Lifetalk Radio, Inc (Collegedale, TN) | KCSH |
| Calvary Chapel of Twin Falls, Inc (Twin Falls, ID) | K207CS, K218DF |
| Washington State University (Pullman, WA) | K210DK, K212FK, KNWR, KLWS, K219BM, K217AJ |
| Chelan Christian Broadcasting (for The Moody Bible Institute of Chicago (KMBI, Spokane)) | K215AD |
| Community Log Church (for The Moody Bible Institute of Chicago (KMBI, Spokane)) | K217ER |
| Spokane Public Radio, Inc. (Spokane, WA) | K220CQ |

Wenatchee, WA – Local-Programmed Student/Community/Public NCE Stations

None⁵

Wenatchee, WA – Student/Community Programmed LPFM Stations

| | |
|------------------------------------|------|
| Wenatchee Youth Radio ⁶ | KWEW |
|------------------------------------|------|

Market Tally⁷

| | |
|----------------------------------------|------------|
| NCE Programming via Translator | 10 |
| Total Translator | 26 |
| Translator MX/Pending FX | ~17 groups |
| Current Licensed LPFM | 1 |
| Current LPFM Availability in Wenatchee | 0 |
| Full Power NCE | 4 |
| Total Nonlocal | 3 |
| Total Local Studio | 1 |

⁵ Wenatchee does have local Christina station KPLW, Growing Christian Foundation

⁶ Christian Youth station, but included here because youth is an underrepresented demographic

⁷ Includes Leavenworth-Cashmere-Chelan area

Reno, NV – Market 124

Reno, NV⁸ – Total Non-Local NCE- relayed Programming

| | |
|-------------------------------------------------|---------------------------------------------------|
| Calvary Chapel of Twin Falls (Twin Falls, ID) | K200AA, K207CP, K210BT, K254AR, K259AK, K291BJ |
| Your Christian Companion Network (Stockton, CA) | K201HO, K259AY |
| EMF (Rocklin, CA) | KLRH, K297AS |
| Family Stations, Inc (Sacramento, CA) | K206BI, K223AL, K254AK |
| Cal State Univ, Sacramento (Sacramento, CA) | K211EH, K215DS, KKTO |
| IHR Educational Broadcasting (Fair Oaks/Tahoma) | K228DA, K235BJ |
| Radio Assist Ministry, Inc | K241BK (for EMF) |
| Eastern Sierra Broadcasting | K269FC (for EMF) |
| Nevada City Community Broadcast Group | K286AN |

Reno, NV – Local-Programmed Student/Community NCE Stations

None

Reno, NV – Student/Community Programmed LPFM Stations

None

Market Tally

| | |
|-----------------------------------|----------------|
| NCE Programming via Translator | 19 |
| Total Translator | 33 |
| Translator MX/Pending FX | ~9 groups |
| Current Licensed LPFM | 0 ⁹ |
| Current LPFM Availability in Reno | 0 |
| Full Power NCE | 5 |
| Total Nonlocal | 1 |
| Total Local Studio | 4 |

⁸ Reno-Truckee-Carson City area

⁹ However, Calvary Chapel of Carson Valley has an LPFM 40 miles south of Reno in Gardnerville.

Bakersfield, CA – Market 77

NCE band snapshot:

| Local/ NonLoc | Program Origination | Freq | Chan | Call | Community of License | Format | Owner |
|------------------|---------------------|------|-------|--------|-------------------------|-----------|-----------------------------------------------|
| NL | SANTA MONICA CA | 88.1 | 201B1 | KCRY | MOJAVE CA | NPR | SANTA MONICA COMMUNITY COLLEGE DISTRICT |
| L | BAKERSFIELD CA | 88.3 | 202B1 | KAXL | GREENACRES CA | RELIGIOUS | SKYRIDE UNLIMITED, INCORPORATED |
| NL | (ROCKLIN CA) | 88.7 | 204B1 | KYLU | TEHACHAPI CA | RELIGIOUS | EDUCATIONAL MEDIA FOUNDATION |
| NL | FRESNO CA | 89.1 | 206B1 | KPRX | BAKERSFIELD CA | NPR | WHITE ASH BROADCASTING, INC. |
| NL | TWIN FALLS ID | 89.3 | 207D | K207DJ | LAKE ISABELLA CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| NL | (ROCKLIN CA) | 89.5 | 208B | KAIB | SHAFTER CA | RELIGIOUS | EDUCATIONAL MEDIA FOUNDATION |
| NL | SANTA MONICA CA | 89.7 | 209D | K209CN | GORMAN CA | NPR | SANTA MONICA COMMUNITY COLLEGE DISTRICT |
| NL | BIG LAKE TX | 89.7 | 209D | K209CW | BUTTONWILLOW CA | RELIGIOUS | PAULINO BERNAL EVANGELISM |
| NL | CARRIZO SPRINGS TX | 89.7 | 209D | K209DN | MCFARLAND CA | RELIGIOUS | PAULINO BERNAL EVANGELISM |
| NL | (ROCKLIN CA) | 89.7 | 209D | K209FB | EDISON CA | RELIGIOUS | EDUCATIONAL MEDIA FOUNDATION |
| NL | FRESNO CA | 90.1 | 211B | KTQX | BAKERSFIELD CA | LATINO | RADIO BILINGUE, INC. |
| NL | TWIN FALLS ID | 90.5 | 213D | K214ED | BENA CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| NL | CAMARILLO CA | 90.9 | 215B | KGZO | SHAFTER CA | RELIGIOUS | THE ASSOCIATION FOR COMMUNITY EDUCATION, INC. |
| NL | TWIN FALLS ID | 91.1 | 216D | K216EW | KERNVILLE CA | RELIGIOUS | CALVARY CHAPEL OF TWIN FALLS, INC. |
| NL | (SACRAMENTO CA) | 91.3 | 217B | KFRB | BAKERSFIELD CA | RELIGIOUS | FAMILY STATIONS, INC. |
| NL | (SACRAMENTO CA) | 91.7 | 219D | K219AO | FAIRMONT, ETC. CA | RELIGIOUS | FAMILY STATIONS, INC. |
| * | ? | 91.7 | 219A | KFHL | WASCO CA | RELIGIOUS | MARY V. HARRIS FOUNDATION |
| NL | CARRIZO SPRINGS TX | 91.9 | 220D | K220GU | LOST HILLS CA | RELIGIOUS | PAULINO BERNAL EVANGELISM |

* Owner based in Texas owns a few stations in different parts of country.

Figure 2: NCE FM Snapshot: Bakersfield, CA area radio market. NL = Nonlocal program origination, L = Local program origination.

Bakersfield, CA – Total Non-Local NCE relayed Programming

| | |
|------------------------------------------------------------|----------------------------------------------|
| Santa Monica Community College District (Santa Mon., CA) | KCRY, K209CN |
| EMF (Rocklin, CA) | KYLU, KIAB, K208FB, K284AO |
| White Ash Broadcasting (Fresno, CA) | KPRX |
| Calvary Chapel of Twin Falls (Twin Falls, ID) | K207DJ, K214ED, K216EW, K260BI, K289AN |
| Paulino Bernal Evangelism (Texas) | K209CW, K209DN, K220GU |
| Radio Bilingue (Fresno, CA) | KTQX |
| The Association for Community Education (Camarillo, CA) | KGZO |
| Family Stations, Inc (Sacramento, CA) | KFRB, K219AO |
| Mary J Harris Foundation (Las Vegas, NV(?)) | KFHL |
| Horizon Christian Fellowship (San Diego, CA) ¹⁰ | K239AZ, K240DH, |

¹⁰ Rebroadcasts KQKL Selma (EMF), KGZO, and KWDS (Kettleman City)

Ondas de Vida, Inc
Community Educational Broadcasting (Visalia, CA)
Juan Alberto Ayala (Texas)

K270AK,
K279BE, K295AZ
K293AG
K261CO
K262BP (repeats
KCRY, Santa Monica
(KCRW))

Bakersfield, CA – Local-Programmed Student/Community NCE Stations

None

Bakersfield, CA – Student/Community Programmed LPFM Stations

Young Urban Broadcasters Association KRHM-LP¹¹

Market Tally

| | |
|--------------------------------|----------------------------|
| NCE Programming via Translator | 19 |
| Total Translator | 19 |
| Translator MX/Pending FX | ~11 groups |
| Current Licensed LPFM | 1 |
| Current LPFM Availability | see footnote ¹² |
| Full Power NCE | 7 |
| Total Nonlocal | 6 |
| Total Local Studio | 1 |

Portland, OR – Market 23

Portland is fortunate to have one full power community radio station, but does not have one full power FM student radio station. In 2005 a Portland music collaborative project attempted to run a micropower community station to serve the city's music and arts scene; the FCC eventually sent a letter to discontinue operations. It is worth noting that due to a combination the Commissions changing of the rules regarding community of license changes and the 2003 translator window, that even if the third adjacent LPFM

¹¹ Reportedly programmed by one person. 60 dBu contour barely gets into south Bakersfield; there is a translator licensed to Bakersfield on the first adjacent channel.

¹² Possibly Ch 273 in W of Bakersfield, or N of town on 277

rule is repealed, there will be no open LPFM frequencies to be applied for in the city of Portland. Instead, the FCC has licensed out-of-town broadcasters to fill these frequencies with programming devoid of local content:

Portland, OR – Total Non-Local NCE-originated Programming

| | |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| EMF (Rocklin, CA): | 5 translators (K224CP, K240CZ, K242AF, K249DK, K274AR) and two full power stations on Mt. Hood (KLVP, KZRI) |
| WAY-FM (Colorado Springs, CO): | (KWYQ via) K284BF, K272EL, K228EU |
| Family Stations (Sacramento, CA): | KPFR |
| Calvary Chapel (Twin Falls, ID): | K220IN, K231AM, K288FT, 273AI |

Portland, OR – Student/Community Programmed Stations

| | |
|---------------------------|-------------------------------------------|
| KBOO Foundation | KBOO |
| The Reed Institute | KRRC (Class D, 10 watts, 4 m HAAT) |
| PCUN | KPCN-LP (43 km from Portland) |

Market Tally

| | |
|---------------------------------------|------------------|
| NCE Programming via Translator | 12 |
| Total Translator | 14 |
| Translator MX/Pending FX | ~9 groups |
| Current Licensed LPFM | 0 |
| Current LPFM Availability | 0 |
| Full Power NCE (reception) | 8 |
| Total Nonlocal | 3 |
| Total Local Studio | 5 |

Ironically, four LPFMs just outside the Portland area are crammed onto one channel in the vicinity (Channel 242, KQRZ-LP (Heritage Christian, Religious), KKJC-LP (Calvary Chapel, Religious), KPCN-LP (PCUN), and KQSO-LP (Western Oregon Radio Club) and KRRC (Class D educational), all face encroachment by KWLZ-FM and KNRQ-FM—both commercial stations which desire to abandon their original communities of license and move to the Portland area. The LPFMs are small town/rural stations not heard in city of Portland (all greater than 30 km away except for KQRZ-LP, 23 km from Portland), but

serve the local populations of small towns/cities; the Class D station serves the Reed student community within Portland. The above is an example of how FCC regulations are fashioned to favor non-local networks on a grand scale, yet discourage community broadcasting, with a net decrease in localism.

Phoenix, AZ - Market 15

Phoenix does not have any student or community radio stations. It has one local LPFM station that emulates a commercial alternative rock station format (KWSS-LP).

Apparently you can receive three full power radio stations with EMF programming delivered via satellite to Phoenix from California.

Phoenix, AZ Non-Local Programming

| | |
|------------------------------------|--------------------------|
| Nation. Farmworkers (Keen,CA) | KNAI |
| Family Stations (Sacramento, CA) | KPHF, K205CI |
| EMF (Rocklin, CA) | KLVK, KLVA, KZAI, K204DR |
| Calvary Chapel (Twin Falls, ID) | K210DY |
| Family Life Broadcasting (?) | KFLR |
| Life On The Way (Sherman Oaks, CA) | K214DN |
| World Radio Net (MacAllen TX) | K216FO |

Phoenix, AZ – Student/Community Programmed Stations

None

Market Tally

| | |
|--------------------------------|------------|
| NCE Programming via Translator | 8 |
| Total Translator | 13 |
| Translator MX/Pending FX | ~13 groups |
| Current Licensed LPFM | 1 |
| Current LPFM Availability | 0 |
| Full Power NCE (receivable) | 7 |
| Total Nonlocal | 4 |
| Total Local Studio | 3 |

Los Angeles/San Bernardino/Riverside – Market 2

Los Angeles/Inland Empire Non-Local Programming

| | |
|-------------------------------------------------------|--------|
| Assoc. for Commun. Edu (Camarillo, CA) | K211DK |
| EMF (Rocklin, CA) | K212FA |
| Life On The Way (Lancaster, CA) | K216EM |
| Life On The Way (Lancaster, CA) | K216FM |
| EMF (Rocklin, CA) | K224DK |
| Assoc. for Commun. Edu (Camarillo, CA) | K251AH |
| Carlos Arana Ministries ¹³ (Camarillo, CA) | K252EI |
| EMF (Rocklin, CA) | K264AF |
| Calvary Chapel of Twin Falls (Twin Falls, ID) | K276EF |
| Assoc. for Commun. Edu (Camarillo, CA) | K295AI |

Los Angeles Student/Community Programmed Stations

| | |
|--------------------------------------------|---------|
| Pacifica Foundation | KPFK |
| Loyola Marymount College | KXLU |
| Pomona College | KSPC |
| Univ of Calif, Riverside | KUCR |
| Univ of Calif, Irvine | KUCI |
| Pepperdine University (Religious, student) | KWVS-LP |
| Startree Foundation | KOCI-LP |

Market Tally

| | |
|--------------------------------|------------------------|
| NCE Programming via Translator | 10 |
| Total Translator | 10 |
| Translator MX/Pending FX | ~19 groups |
| Current Licensed LPFM | 4 ¹⁴ |
| Current LPFM Availability | 0 |
| Full Power NCE (receivable) | Multiple ¹⁵ |
| Total Nonlocal | - |
| Total Local Studio | (All) |

Local student/community radio has better presence in Top-10 markets compared to non-local programming. KPFK covers the southland, and regional student stations are

¹³ Locally owned translator rebroadcasts Camarillo, CA channel

¹⁴ Pepperdine University (Malibu), Startree Foundation (Newport Beach), Andres Serrano Ministries (Corona), and Vida Abundante Church (San Bernardino)

¹⁵ Depending upon which part of the Southland you are in, KKJZ, KCSN, KSPC, KUCI, KXLU, KPCC, KCRW, KCRW, KPFK, KUSC...

receivable in a third of the metro. Translators with non-local programming mainly appear on the rim of the metro, as most translator frequencies are currently pending.

Conclusions

The above gives us a glimpse of NCE/LPFM non-commercial localism in regards to markets of varying size. The following could be concluded:

1. The top 10 largest radio markets usually have multiple NCE student or community-oriented radio outlets. Older markets, such as in New England, that have started out early granting Class D and Class A NCE's, have a diversity of college radio stations. However, large (*non-top 10*) to small markets have little or no local community-based or student programming, but have multiple sources for non-local programming.
2. In each market examined except Los Angeles, Educational Media Foundation owns more full power stations than all local community and student radio *combined for those markets*. In all communities, the single LPFM station represents the capable desire of people to start FM stations for students and the communities, but most likely aren't aware of the protocol for obtaining full power stations, or don't have the ability to apply¹⁶.
3. There is a large gap between **non-local noncommercial programming** and **local non-commercial programming** in many communities. There is **zero, one, or**

¹⁶ NCE application opportunities are few and far between. To claim a frequency you almost have to be in the right place at the right time; if not, there is no possibility of ever starting a full power radio station. Common Frequency performed outreach to student and community groups before the October 2007 filing window. Most groups contacted were unaware of the application window, had no time to prepare (it takes months to years for student groups to receive permission from University officials, or colleges or state universities to change their by-laws to conform to the FCC point system), and had problems finding engineers and lawyers to help them file because those services were already booked in advance for the window.

two local non-commercial services while at times **five to twenty non-local network/automated services** are available.

4. Satellite stations have the ability to deliver quality programming into areas, such in the case of KQTX (Radio Bilingue) and KPRX (NPR) in Bakersfield, but when multiple religious and public broadcasters have satellite stations in the same area (like NPR in Redding), redundant programming sources prevent local entities from utilizing channels. KPRX (Valley Public Radio), originating out of Fresno, has” Kern Advisory Council” for Bakersfield—kudos to them for this effort.
5. There is minimum or no availability of additional open channels for any new non-commercial service in many major cities¹⁷; this is seen as problematic for restoring the balance between local community and non-local NCE service.
6. Larger markets have experienced a multicultural growth in preceding years and require more than the few college and community radio outlets to meet localism needs. While this may be true of other markets ranked 11+, markets 11+ need to work on creating the *bare essentials* for local community or student educational radio. This cannot be achieved without enacting one or more of the following: A) opening up more NCE channels via expanding the band into analog Channel 6 frequencies, B) changing LPFM licensing requirements to allow for placement of the service in larger urban areas, C) requiring current broadcasters that don’t provide any local programming to allow community members to utilize airtime

¹⁷ Including NCE and LPFM; NCE: Based upon preliminary study of nationwide NCE availability Radio for People Coalition in 2006, detailed NCE study of the top 140 markets from Public Radio Capital in 2007. LPFM: According to data by Rec Network (recnet.com), and sampling of markets regarding LPFM in comment by Prometheus and Common Frequency Re MM Docket No. 99-25, April 2008.

for community affairs programming, or D) requiring community boards to provide development of more local programming.

7. The major obstacle in providing any local non-commercial community programming in cities are full power stations and translators that are operated from hundreds to thousands of miles away. Viewing the current licensed stations, and current translator and NCE application backlog, we believe that some NCE broadcasters desire to create national networks.
8. In the small markets observed, all the NCE programming originates from outside the market. A single LPFM station usually provides the only local non-commercial programming. It seems ironic that the large stations that provide minimal or no local coverage are allowed to monopolize local frequencies, but the local station is relegated to lower wattages. Small markets can have 10 times as many translators than LPFMs, simply due to FCC regulations.
9. It is incorrect to assume all small markets have LPFM openings and this will solve all localism problems. Ithaca, NY, market 285, has no LPFM openings, even if the third adjacent is repealed.
10. Main studio waivers and translator rules have generally worked against local NCE and LPFM station ownership and outlets for local programming. Lack of oversight of these non-local program sources has essentially locked out local communities from the airwaves. Even more crucial, it has created a dangerous situation where local emergencies cannot be adequately addressed using the public's airwaves. The Commission has asserted that 307(b) pertains to both transmission and reception service. Transmission service "is the opportunity

which a radio station provides for the development and expression of local interests, ideas, and talents and for the production of radio programs of special interest to a particular community”¹⁸. Current regulations only enforce NCE reception service (NCE “white” and “gray” areas) and not transmission service. The Commission should be required to make local service available, such as by reserving a commercial channel for reserved use in areas where local-originated NCE programming does not exist.

II. Main Studio Waiver and Localism

Informal Overview

As far back as its inception, the FCC has considered the main studio a key attribute of local public service. In modern era of deregulation, it is one of the only characteristics that tie a licensee to its community of service. It is no coincidence then that the non-commercial main studio waiver has eliminated any local commitment of the licensee to serve a community of license. Waivers are granted solely on faith, with no promise of the licensee to provide any proof of localism, no matter how loosely defined.

Theoretically, a 100-watt station in Alaska could have multiple 100 kW studio-waived stations in Phoenix, Seattle, and Washington, DC, and is not required to produce any specialized local programming for these areas; this type of operation is not in the public interest. Although we do believe the studio waiver is useful for licensees who have a dedication to serving all of their communities, it is a disservice to licensees who ignore the needs of local communities because the FCC does not stipulate any minimum local

¹⁸ Rulemaking concerning main studios, 15 FR 8993 (1950)

programming commitment. The evolution of the waiver process was informal, based upon its use in statewide public networks, and the good that resulted from that. However, much of that good was derived from the regimented ideology of public licensees, which are bound by nature to serve in the public interest, and are constrained geographically by governing documents. These licensees pioneered the “good cause” the Commission now utilizes to grant waivers. However, due to many reasons, these original “good causes” are rarely exhibited nowadays. Due to overall impact these waivers have on localism, we believe a re-assessment is in order.

Analysis

We assert that the basis for granting main studio waivers needs to be re-examined due to the following concerns:

NCE scope has changed: In recent years, the growth of national NCE networks requires an update of the antiquated main studio waiver policy in order to properly address new localism concerns. Studio waivers were traditionally assumed to be used by state and regional networks in which the scale of execution allowed for addressing community needs; precedence was chiefly set by trustworthy publicly owned state networks, which by nature and proximity address all regional/local issues¹⁹. The FCC never has assumed or referred to non-regional, or “national networks”, but has applied state network customs to national networks without judging whether the scale of such networks impact localism.

¹⁹ By example, Georgia State Board of Education 70 FCC 2d 948 (1979), Nebraska Educational Television Commission 4 RR 2d 771 (1965)

Larger national networks rarely if ever tackle local issues or have news programs specific to individual communities.

Moot process: The waiver process of has been previously been described by the Commission as “traditionally addressed on a case by case basis”²⁰. According to CDBS, the available database record of main studio waiver granting shows 666 approved, and eleven denied. Of those eleven denied, one was for a non-reserved channel²¹. This leaves 666 approved, and one dismissed. The characteristic of an approved main studio waiver in modern times appears to be merely supplying a standardized statement to the Commission asking for a waiver, with the licensee prescribing terms of operation. We don’t see this as following a process described, since forwarding a boilerplate statement to the Commission to disregard a rule (and if the licensee is non-commercial, the Commission addressing that it has waived the rule before), does not seem like a *case-by-case* basis. For example, on just *one day* in 2007, the FCC granted eight waivers to one licensee²². A *case by case* basis would include examining comprehensive attributes of the licensee’s request, such as the licensee’s track record in providing local-specific programming to communities served, how many total stations are owned by the licensee, how this will affect the community of license, what other licensees are already broadcasting to the community, are there any more channels in the community, is the licensee trafficking licenses after they are granted, etc. We understand that the

²⁰ *Amendment of Main Studio and Program Origination Rules*, 3 FCC Rcd 5027 (1988)

²¹ The Commission usually denies main studio waivers for commercial stations because it is based upon economic efficiencies only suitable for non-commercial broadcasters. Example: *See Letter to Donald E. Martin, Esq Re: Main Studio Waiver Request for KRHV* (June 10, 2005)

²² According to FCC CDBS, Broadcasting for the Challenged, Inc received eight approved main studio waivers on 6/13/2007 (and seven on 10/25/2006).